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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DEMARQUIS DEAJON DEWS,

Defendant and Appellant.

F077432

(Super. Ct. No. F08906679)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. James Petrucelli, Judge.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Peña, J. and DeSantos, J.

Appointed counsel for defendant Demarquis Deajon Dews asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed and we received no communication from defendant. We find no arguable error that would result in a disposition more favorable to defendant, and thus we affirm.

BACKGROUND

On May 11, 2009, defendant was convicted by jury trial of second degree robbery (Pen. Code, § 211;¹ count 1), criminal threat (§ 422; count 2), and dissuading a witness (§ 136.1, subd. (a)(1); count 3). The jury found true the allegations that defendant personally used a firearm during the commission of count 1 within the meaning of section 12022.53, subdivision (b) and personally used a firearm during the commission of count 2 within the meaning of section 12022.5, subdivision (a).

On June 9, 2009, the trial court sentenced appellant to prison for a total of 15 years eight months, as follows: on count 1, 15 years (five years, plus a consecutive term of ten years for the section 12022.53, subdivision (b) enhancement); on count 2, 13 concurrent years (three years, plus ten years for the section 12022.5, subdivision (a) enhancement); on count 3, eight consecutive months.

On June 10, 2009, defendant appealed, claiming the term on count 2 should have been stayed pursuant to section 654.

According to a minute order, another sentencing hearing occurred on November 16, 2009. The trial court vacated the sentence and imposed a new sentence with a different term on count 3—a three-year concurrent term instead of the eight-month consecutive term. As a result, the total term became 15 years.

¹ All statutory references are to the Penal Code unless otherwise noted.

On August 10, 2010, we remanded the case with directions to the trial court to stay the sentence on both count 2 and its section 12022.5, subdivision (a) enhancement pursuant to section 654. (*People v. Dews* (Aug. 10, 2010, F057889) [nonpub. opn.].)

On October 12, 2010, the remittitur on defendant's appeal issued.

Four years later, on November 10, 2014, the trial court filed an amended abstract of judgment that reflects the stayed term and enhancement on count 2. A corrected minute order also notes the change.

On February 2, 2018, defendant filed a motion under Senate Bill No. 620, seeking to have the 10-year firearm enhancement under section 12022.53 stricken.

On March 15, 2018, the trial court denied the motion because defendant's judgment was final long before the effective date of Senate Bill No. 620.

On April 30, 2018, defendant filed a notice of appeal.

DISCUSSION

On October 11, 2017, the Governor signed Senate Bill No. 620, which became effective on January 1, 2018. (Stats. 2017, ch. 682, §§ 1 & 2, pp. 5104-5106.) As relevant to this case, Senate Bill No. 620 amended sections 12022.5 and 12022.53, to give discretion to the trial court to strike a firearm enhancement in the interest of justice. Both sections now state: "The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law." (§§ 12022.5, subd. (c), 12022.53, subd. (h).)

Senate Bill No. 620's amendments apply retroactively to cases not yet final on appeal. (*In re Estrada* (1965) 63 Cal.2d 740, 744 [if an amended statute "lessening punishment becomes effective prior to the date the judgment of conviction becomes final then ... it, and not the old statute in effect when the prohibited act was committed, applies"]; *People v. Woods* (2018) 19 Cal.App.5th 1080, 1089-1091.) However, as noted

by the trial court, defendant's conviction was final well before January 1, 2018. (See *People v. Vieira* (2005) 35 Cal.4th 264, 306 [when determining retroactive application of an amendment to a criminal statute, a judgment is final when the time for petitioning for a writ of certiorari in the United States Supreme Court has passed].) We agree with the trial court's conclusion that Senate Bill No. 620's amendments did not apply to defendant.

Having undertaken an examination of the entire record, we find no evidence of ineffective assistance of counsel or any other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The order is affirmed.